IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 63 OF 2002.

1. Shri Jose Camilo Cardozo,
   r/o H. No. 280, Ward No. III,
   Guirdolim, Salcete Goa.
2. Smt. Rosa Filomena Cardozo,
   r/o H. No. 280, Ward No. III,
   Guirdolim, Salcete Goa. ... Appellants.

Versus

1. Shri Joaquim Inacio Cardozo,
   r/o H. No. 279, Ward No. III,
   Guirdolim, Salcete Goa.
2. Mrs. Martha Piedade Cardozo,
   r/o H. No. 280, Ward No. III,
   Guirdolim, Salcete Goa.
3. Mrs. Ana Maria Pascoela Cardozo,
   r/o H. No. 1487, Sonvonxem,
   Curtorim, Salcete Goa.
4. Shri Martinho Baz, r/o H. No.
   1487, Sonvonxem, Curtorim,
   Salcete Goa.
5. Smt. Conceicao Vicentina Cardozo,
   H. No. 693, Guirdolim, Anthoy
   Chandor, Salcete Goa.
6. Shri Francis Xavier D'Costa,
   H. No. 693, Guirdolim, Anthoy
   Chandor, Salcete Goa.
7. Shri Basilio D'Costa,
   H. No. 693, Guirdolim, Anthoy
   Chandor, Salcete Goa.
8. Shri Vincy D'Costa, H. No.
   693, Guirdolim, Anthoy
   Chandor, Salcete Goa.
9. Fatima D'Costa, H. No. 693,
   Guirdolim, Anthoy Chandor,
   Salcete Goa.
10. Mrs. Damiana Cardozo, Xelvona
    Baga, Curchorem, Goa.
11. Mr. Luis Travasso, Xelvona
    Baga, Curchorem, Goa. ... Respondents.

Mr. Maria Pinto Almeida, Advocate for the Appellants.

Mr. M.B. D'Costa, Advocate for the Respondents 2, 5, 6, and 8 to 11.

Coram: P.V. HARDAS, J.

Date: 6th February 2003.

ORAL JUDGMENT.

By consent of parties, this Appeal from Order is taken up for final hearing at the stage of admission. The Records and Proceedings have been called.

2. This Appeal from Order is filed against the Order, dated 20th April 2002, passed by the Comarca Judge of Salcete and Quepem, Margao, in Inventory Proceedings No. 6 of 1995.

3. The learned trial Court held that the present appellants had failed to prove the improvements and, therefore, the improvements could not be listed. It is this part of the Order, which is challenged in the present Appeal before me.

4. A reference may usefully be made to the Order, dated 20th June 2000, passed by the learned Comarca Judge. The said Order has been annexed to the present Appeal. In the said Order, in paragraph 11, the learned Comarca Judge has held that the improvements regarding the residential house has not been proved by documentary evidence and, therefore, there is need of holding an inquiry. The learned Judge further went on to hold that the improvements made by the said Cabeca de Casal are required to be proved by conducting an inquiry. In

pursuance to this Order, the learned Comarca Judge had held the inquiry. This Order of the learned Comarca Judge, dated 20th June 2000, has not been challenged by the present appellants.

5. Mr. Almeida, the learned counsel appearing on behalf of the appellants, has urged before me that the report of the Valuer, which is at Exhibit 21, in the Records and Proceedings of the Inventory Proceedings No. 6 of 1995, clearly discloses that the Valuer has assessed the improvements made to the residential house. Therefore, according to the learned counsel for the appellants, the report is conclusive evidence regarding the valuation of the improvements and, despite the fact that the present appellant no. 2 in her evidence had stated: "I cannot tell what is the value of improvements carried on by me and the cost of the residential house constructed by me", the report of the valuer ought to have been considered by the learned Comarca Judge.

6. Mr. D'Costa, the learned counsel appearing on behalf of the respondents 2, 5, 6 and 8 to 11, has urged before me that the Order of the learned Comarca Judge, dated 20th June 2000, directing the holding of inquiry and calling upon the present appellants to prove the improvements, has not been challenged by the appellants.

Therefore, according to the learned counsel for the respondents 2, 5, 6 and 8 to 11, the burden was on the appellants to establish and prove by cogent evidence the improvements done to the residential house. Further, the learned counsel has invited my attention to the reply filed by the present respondent no. 1, wherein he has stated that for the construction of the house, the timber used was from the property and he has denied the valuation in respect of the improvements done by the present appellants. It was on this objection that the learned Comarca Judge had ordered the holding of an inquiry. Further, he has also submitted that the Valuer has not given the value of the improvements and, therefore, it was for the appellants to have proved the improvements.

7. It was certainly the responsibility of the present appellants to have led evidence to prove the improvements done by them. The learned trial Court in its Order, dated 20th June 2000, had clearly called upon the present appellants to prove the improvements and, accordingly, he has held an inquiry. The appellants could have examined the Valuer, which they have not done. The evidence of the appellant no. 2 is to the effect that she cannot tell the value of the improvements carried out by her and the cost of the residential house constructed by her. The learned

Comarca Judge, therefore, according to me, was perfectly right in holding that the present appellants had not proved the improvements as alleged. There is no perversity in the Order of the learned Comarca Judge and I see no reason for interference in the said Order. The appellants have not been able to point out any provision by which the report of the Valuer can be accepted as substantive evidence particularly when the learned Comarca Judge had directed the present appellants to prove the improvements as alleged by them.

8. In the light of the aforesaid discussion, therefore, I see no merit in the appeal and the appeal is dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

ed's.